

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE  
SUPERIOR TRIBE OF CHIPPEWA INDIANS  
OF THE BAD RIVER RESERVATION

*Plaintiff,*

v.

ENBRIDGE ENERGY COMPANY, INC., and  
ENBRIDGE ENERGY, L.P.

*Defendants.*

Case No. 3:19-cv-00602

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ENBRIDGE ENERGY, L.P.

*Counter-Plaintiff,*

v.

BAD RIVER BAND OF THE LAKE  
SUPERIOR TRIBE OF CHIPPEWA INDIANS  
OF THE BAD RIVER RESERVATION and  
NAOMI TILLISON, in her official capacity

*Counter-Defendants.*

Judge William M. Conley  
Magistrate Judge Stephen Crocker

**DEFENDANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF**

Defendants (collectively, “Enbridge”) respectfully move for leave to file a Supplemental Brief in Support of its Motion for Partial Summary Judgment (Dkts. 230, 231) and in Opposition to Plaintiff’s Motion for Partial Summary Judgment (Dkt. 207). The proposed Supplemental Brief is being filed contemporaneously with this motion.

Enbridge seeks to include in the record a new and important development. On August 29, 2022, the Government of Canada formally invoked the dispute resolution provisions of Article IX of the 1977 Transit Treaty with the United States. *See* Statement by the Honourable Mélanie Joly, Canada’s Minister of Foreign Affairs (attached as Exhibit A to Supplemental Brief). As the Government of Canada explains, Article IX is being invoked in direct response to the current litigation and Plaintiff’s efforts to shutdown Line 5. *See id.* Article IX is the process that the United States and Canada selected for resolving disputes “over the [Treaty’s] interpretation, application, or operation”—including any measures to impede the transmission of hydrocarbons in transit pipelines such as Line 5. Articles II and IX of the Transit Treaty, 1997 WL 181731. This new development supports Enbridge’s arguments that Plaintiff’s requests for ejectment of Line 5 and for injunctive relief are precluded as a matter of law. Dkt. 231 at 13-18; Dk. 207 at 109-115. Accordingly, Defendants respectfully request leave to file a short Supplemental Brief, explaining how this important development further supports Enbridge’s arguments.

Enbridge has contacted counsel for Plaintiff regarding this motion for leave. Plaintiff does not oppose this motion and represented that it intends to respond to Enbridge’s supplemental brief.

WHEREFORE, Defendants respectfully request that the Court enter an order granting this Motion for Leave to file the Supplemental Brief.

Dated this 29th day of August, 2022

Respectfully submitted,

/s/ David H. Coburn

/s/ Justin B. Nemeroff

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Counsel for Enbridge Energy Company, Inc., and  
Enbridge Energy, Limited Partnership

**CERTIFICATE OF SERVICE**

I certify that on August 29, 2022, I served the foregoing document on all counsel of record using the Court's ECF system.

/s/ Justin B. Nemeroff